

1 JEFFREY B. COOPERSMITH (SBN 252819)
2 WALTER F. BROWN (SBN 130248)
3 MELINDA HAAG (SBN 132612)
4 RANDALL S. LUSKEY (SBN 240915)
5 STEPHEN A. CAZARES (SBN 201864)

6 ORRICK, HERRINGTON & SUTCLIFFE LLP
7 The Orrick Building
8 405 Howard Street
9 San Francisco, CA 94105-2669
10 Telephone: +1-415-773-5700
11 Facsimile: +1-415-773-5759

12 Email: jcoopersmith@orrick.com; wbrown@orrick.com;
13 mhaag@orrick.com; rluskey@orrick.com;
14 scazares@orrick.com

15 Attorneys for Defendant
16 RAMESH “SUNNY” BALWANI

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

HOLMES, et al.,

Defendants.

Case No. 18-CR-00258-EJD

**DECLARATION OF JEFFREY B.
COOPERSMITH IN SUPPORT OF
DEFENDANT RAMESH “SUNNY”
BALWANI’S JOINDER IN MOTION TO
DISMISS SUPERSEDING
INFORMATION**

Judge: Honorable Edward J. Davila

DECLARATION OF JEFFREY B. COOPERSMITH

I, Jeffrey B. Coopersmith, declare as follows:

1. I am lead counsel for defendant Ramesh “Sunny” Balwani in this case. I am an attorney admitted to practice in the State of California. I am a partner at the law firm of Orrick, Herrington & Sutcliffe LLP, counsel of record for Mr. Balwani. I submit this declaration in support of Mr. Balwani’s Joinder in Defendant Elizabeth Holmes’s Motion to Dismiss Superseding Information. I have personal knowledge of the facts stated here.

2. The government did not ask whether Mr. Balwani would waive his right to an indictment by grand jury before or after filing a superseding information on May 8, 2020. On the next business day, May 11, 2020, I sent an email to AUSA John Bostic asking for a call and Mr. Bostic called me that afternoon. I asked Mr. Bostic why the government filed a superseding information, and after the call I sent the email attached as **Exhibit A** summarizing it. In my May 11 email, among other things I pointed out that the government had never asked whether Mr. Balwani would waive his constitutional right to be charged by a grand jury and confirmed that Mr. Balwani would not do so.

3. Attached as **Exhibit B** is a copy of the May 13, 2020 email I received from Mr. Bostic in response, partially redacted to protect the names of several patients.

I declare under penalty of perjury that the foregoing is true and correct.

Executed May 18, 2020 at Seattle, Washington.

Dated: May 18, 2020


Jeffrey B. Coopersmith

EXHIBIT A

Brecher, Aaron

From: Coopersmith, Jeffrey
Sent: Monday, May 11, 2020 5:46 PM
To: Bostic, John (USACAN)
Subject: RE: 2020.05.08 [USA] Ltr to Counsel re Discovery Production.pdf

John, thanks for calling me back this afternoon. Just to summarize our conversation, I asked why the government filed a superseding information in this case. In this regard, I mentioned my view that such a charging document is inoperative without a waiver of grand jury. You noted that neither defendant has waived the grand jury right, but you did not agree with my characterization of the document as inoperative. Until our conversation today, I had never discussed the issue of whether Mr. Balwani would waive his grand jury right with any member of the government's team, and no member of that team has ever asked me if Mr. Balwani would waive. But since you mentioned that there have been no waivers during our call today, I can confirm at this time that Mr. Balwani does not waive his grand jury right.

You told me that it was not your place to tell me the government's strategy with respect to filing the superseding information, but alluded to other case events that would or could follow from its filing. I asked what those events would be, and you told me you would confer with the government team before responding.

I also asked for the names of the three patients who are referred to by initials in the superseding information (B.B., E.T., and M.E.). You told me that you would check with the government team and let me know. I pointed out that I had also asked Bob Leach this question in a couple of emails but didn't get a response.

Thanks again for the call, and for agreeing to follow up.

Best,

JEFFREY B. COOPERSMITH
Partner
ORRICK HERRINGTON & SUTCLIFFE LLP
701 Fifth Avenue, Suite 5600
Seattle, WA 98104

405 Howard Street
San Francisco, CA 94105

206-839-4339 (desk)
206-708-9396 (cell)
jcoopersmith@orrick.com
Admitted in Washington, California, and the District of Columbia

-----Original Message-----

From: Bostic, John (USACAN) <John.Bostic@usdoj.gov>
Sent: Monday, May 11, 2020 1:03 PM
To: Coopersmith, Jeffrey <jcoopersmith@orrick.com>
Subject: RE: 2020.05.08 [USA] Ltr to Counsel re Discovery Production.pdf

Hi Jeff,

I just sent the password for that production, thanks for the reminder. And I'll give you a call this afternoon.

Best,
John

-----Original Message-----

From: Coopersmith, Jeffrey <jcoopersmith@orrick.com>
Sent: Monday, May 11, 2020 12:54 PM
To: Bostic, John (USACAN) <jbostic@usa.doj.gov>
Subject: 2020.05.08 [USA] Ltr to Counsel re Discovery Production.pdf

John, is there a password that goes with this letter? Thanks.

Also, if you could give me a call that would be great. I have a quick question for you. My number is 206-708-9396. Thanks.

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EXHIBIT B

Brecher, Aaron

From: Bostic, John (USACAN) <John.Bostic@usdoj.gov>
Sent: Wednesday, May 13, 2020 2:12 PM
To: Coopersmith, Jeffrey
Cc: Schenk, Jeffrey (USACAN); Leach, Robert (USACAN); Baehr-Jones, Vanessa (USACAN)
Subject: U.S. v. Balwani - follow up

Jeff,

Thanks again for speaking by phone the other day. In response to your questions about the superseding information, I agreed to follow up on your request for the names of the patients associated with Counts Nine through Eleven of the charging instrument. I'm providing those names below:



Regarding your question about next steps, we should arrange for an arraignment on the information within a reasonable time. I suggest we schedule one for the afternoon of June 16, which is the date of the status conference. Please let us know if that works for you.

Best,
John

JOHN C. BOSTIC
Assistant United States Attorney
Northern District of California
150 Almaden Blvd. | San Jose, CA 95113
Tel.: (408) 535-5589 | Fax: (408) 535-5066
Email: john.bostic@usdoj.gov